

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TORREY DAVIDSON,)
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Movant,)
)
)
v.) No. 4:10CV647 CDP
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before me on movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Movant seeks relief from the judgment in United States v. Davidson, 4:08CR660 CDP (E.D. Mo.). However, movant filed a direct appeal from the judgment, and movant's direct appeal is still pending. See United States v. Davidson, No. 09-3146 (8th Cir.). Because the direct appeal is pending, movant's § 2255 motion has been prematurely filed. See Masters v. Eide, 353 F.2d 517, 518 (8th Cir.1965) (per curiam) ("[o]rdinarily resort cannot be had to 28 U.S.C.A. § 2255 or habeas corpus while an appeal from conviction is pending."). And I find no extraordinary circumstances that would allow movant to file his motion at this time. As a result, I will dismiss this action without prejudice to refile after the criminal judgment becomes final.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice.

An Order of Dismissal will accompany this Order.

Dated this 27th day of April, 2010.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE